Chapter III
Apostilles by Qadi in the Vellum Documents

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1. Introduction

A history of a deed never ends at the point when it was drawn up. Other deeds could be added to it later, as we have already shown in Part I of our study on the Vellum Documents.[1] As well, a deed would be used as evidence when its holder needed to claim his right, or someone else wanted to copy it onto another sheet of a document as a related deed complementing his own contract deed. In the course of such processes making use of a deed, the involvement of a qadi or deputy qadi was sometimes required for its validation. Such traces of a qadi's involvement can be found in the Vellum Documents at the Toyo Bunko, where we find a qadi's notes written in his own hand.

For example, in Deed 2 of Document XIII (XIII-2) below, there is a note of three lines, whose handwriting is different from that of the body of the text, after the deed has been closed with the signatures of two notaries (Figure 1). The first and second lines read, "Praise be to God. A notary testified concerning the handwriting of the two persons due to their absence, and [his testimony] was accepted. Servant of the supreme God {XIII-Q1} (signature) made notification about that" (*al-Ḥamd li-llāh, shahida ʿalā khaṭṭ-himā li-maghīb-himā ʿadl fa-qubila wa-aʿlama bi-hi ʿubayd Allāh taʿālā {XIII-Q1}*). The third line in yet another different handwriting reads, "A notary testified about his handwriting and [his testimony] was accepted" (*Shahida ʿalā khaṭṭ-hi ʿadl fa-qubila*). Another example (Figure 2) is found below Deed 2 of Document XII (XII-2). Again, after the signatures of two notaries, there is a note in a different handwriting, *istaqalla*, that literally means "it became independent," or the deed is authorized, become fully effective, and is not dependent on any other thing. In this case, the note consists of just one word, without a qadi's signature. We will call such various kinds of notes "apostille."

[1] SATO Kentaro, "Form and use of the Vellum Documents," *The Vellum Contract Documents in Morocco in the Sixteenth to Nineteenth Centuries*, Part I, ed. MIURA Toru and SATO Kentaro, Tokyo: Toyo Bunko, 2015, pp. 20–21.

Figure 1. Apostille on XIII-2 with a qadi's signature

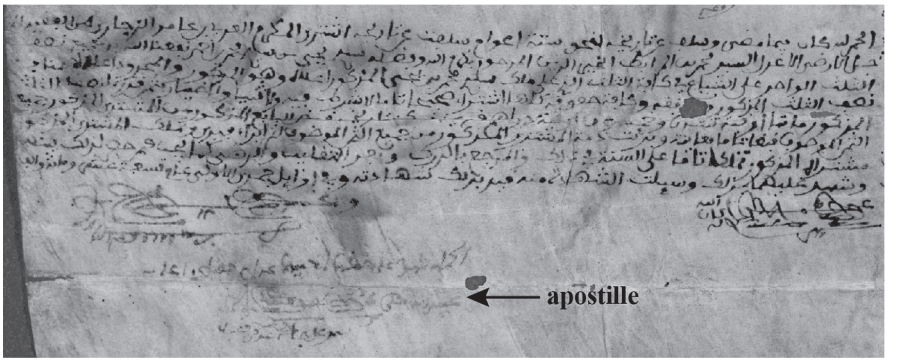
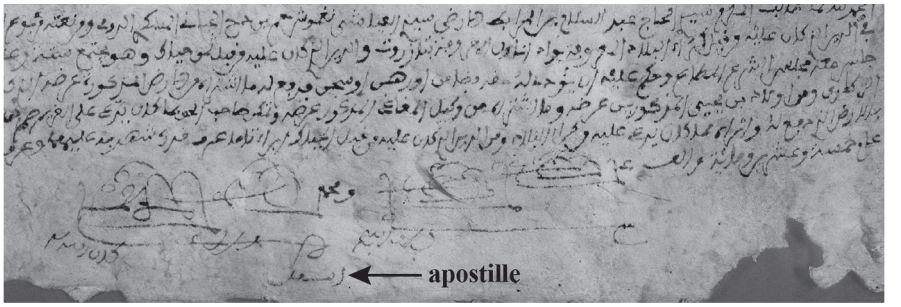


Figure 2. Apostille on XII-2 without a qadi's signature



In principle, Islamic law restricts legal proof to the oral testimony of two qualified witnesses alone. A written deed therefore cannot be effective as evidence until a qadi either accepts oral testimony about its content by the two qualified notaries who drew it up or validates it by some other procedure.[2] A deed only guarantees to its holder that the notaries will give testimony in case of necessity. It needs a qadi's involvement in order to be valid for evidence. An apostille is affixed to the deed as a sign of his validation.

When we published Part I of this study, we did not pay enough attention to apostilles. Our aim here is to show what they were, how they were written, and what kind of effect they had, based on instructions in qadi manuals and examples from the Vellum Documents.

[2] Émile Tyan, *Le Notariat et le régime de la preuve par écrit dans la pratique du droit musulman*, 2nd ed., Beirut, n.d., p. 66–67; Abū al-Shitāʾ al-Ṣanhājī, *al-Tadrīb ʿalā taḥrīr al-wathāʾiq al-ʿadlīya: Wathīqa wa-sharḥ*, 2nd ed., 2 vols., Rabat: Maṭbaʿat al-Amnīya, 1995, vol. 2, p. 88.

2. *Khiṭāb* by qadi

First, we will see how qadi manuals explain apostille. We use here two works written in 18th–19th century Fès: *Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim* by Muḥammad al-Tāwudī Ibn Sūda (d. 1209/1795) and *al-Bahja fī sharaḥ al-Tuḥfa* by ʿAlī al-Tasūlī (d. 1258/1842). Both are commentaries on the *Tuḥfat al-ḥukkām*, a famed qadi manual written in verse, by the Maliki jurist, Ibn ʿĀṣim (d. 829/1426).

In this manual, the qadi's apostille is called *khiṭāb*, a verbal noun from the verb *khāṭaba* which means "speak, talk, address." Both al-Tasūlī and al-Tāwudī Ibn Sūda, citing another commentator Mayyāra (d. 1072/1662), explain that the *khiṭāb* is what "a qadi of a city writes to a qadi of another city about a confirmed right in favour of someone at the jurisdiction of the addresser qadi against someone else at the jurisdiction of the addressee qadi, in order that the addressee decides on the case in his jurisdiction" (*an yaktuba qāḍī balad ilā qāḍī balad ākhar bi-mā thabata ʿinda-hu min ḥaqq al-insān fī balad al-qāḍī al-kātib ʿalā ākhar fī balad al-maktūb ilay-hi li-yaḥkuma ʿalay-hi hunālika ʿamalan*). Thus, a *khiṭāb* is a notification addressed from one qadi to another. The qadi manual, however, says that the addresser qadi does not necessarily specify the name of the addressee. In that case, any qadi of another jurisdiction or any incoming qadi can be its addressee. As far as the Vellum Documents at the Toyo Bunko are concerned, no apostille has the name of the addressee. A qadi must write a *khiṭāb* if the holder of the deed requests him to do so.[3] It is very probable that when the content of a deed was established at the qadi court by way of two notaries' oral testimony or some other way, the holder of the deed wanted his deed to have full effect without any further deposition of oral testimony. With the qadi's apostille, the deed would gain such an effect not only for the addresser qadi but also for qadis of any place or time.

Al-Tasūlī and al-Tāwudī Ibn Sūda also demonstrate how to write a *khiṭāb* according to practices of Fès at their time, the 18th–19th century. It was written below the validated deed, on its reverse side, or on another paper stuck to it.[4] Typical formulae were: "Praise be to God. The two men gave testimony and [their testimony] was accepted. So-and-so gave notification about it" (*al-Ḥamd li-llāh. Addayā fa-qubilā wa-aʿlama bi-hi fulān*); "Praise be to God. The two men gave testimony and [their testimony] was confirmed. He gave notification about it" (*al-Ḥamd li-llāh. Addayā fa-thabata wa-aʿlama bi-hi*); "Praise be to God. So-and-so

[3] al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, 2vols., ed. Muḥammad ʿAbd al-Qādir Shāhīn, Beirut: Dār al-Kutub al-ʿIlmīya, 1998, vol. 1, p. 118.

[4] All the apostilles in the Vellum Documents are affixed below the deeds.

gave notification about its veracity or its authorization" (*al-Ḥamd li-llāh. Aʿlama bi-ṣiḥḥat-hi aw bi-istiqlāl-hi fulān*). In the place of "so-and-so" (*fulān*), the qadi affixes his signature (*shakl* / *ʿalāma*) in order that another person should not write a *khiṭāb* in the qadi's name.[5] As these formulae show, a *khiṭāb* comprises two elements: validation of the deed, which is represented by the words "was accepted" (*qubila*), "was confirmed" (*thabata*), "veracity" (*ṣiḥḥa*), "authorization" (*istiqlāl*), and its notification represented by the word "he gave notification" (*aʿlama*). The word *aʿlama* well reflects the original meaning of *khiṭāb*, speech or address to someone.[6] Thus, we may say that *khiṭāb* implies validation of a deed as an established fact by a qadi, and its notification from him to another qadi.

The three phrases above were not the only formulae for *khiṭāb*. We can find a variety of *khiṭāb* in the Vellum Documents, the fatwa collection, and the commentaries of al-Tasūlī and al-Tāwudī Ibn Sūda. Especially, there is a variety of words used for the validation which seem to have specific meanings. The word *qubila* (he was accepted) always comes with such words as *shahida* (he testified) or *addā* (he gave testimony) in the Vellum Documents. It indicates that the witness appeared before a qadi, and gave his testimony, which was accepted by the qadi. It is the most fundamental procedure for validation of a deed by a qadi, because the testimony by two qualified witnesses establishes a fact according to Islamic Law. Other words were also used for validation of a deed. The commentaries of the qadi manual list: *istaqalla* (it became authorized), *thabata* (it became confirmed), and *iktafā* (it became sufficient). These words sometimes come in the form of a verbal noun after the word *aʿlama*, like *aʿlama bi-istiqlāl-hi* (he notified its authorization). The word *ṣiḥḥa* (veracity) also appears with *aʿlama* in the Vellum Documents. The distinction between these words is not so clear. Both commentators say that one scholar argues that all of them have same meaning but another classifies them in terms of priority. According to the latter's opinion, *istaqalla* is used for something established based on the testimony of fully qualified witnesses (*bi-shahādat al-mubrizīn min al-ʿudūl*), *thabata* was for something established by some other kind of witness, and *iktafā* was the weakest of the three.[7] In any case, the general idea of the words seems to be unanimous: the content of the deed was established as a fact in the qadi

[5] al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, vol. 1, pp. 120, 122–123.

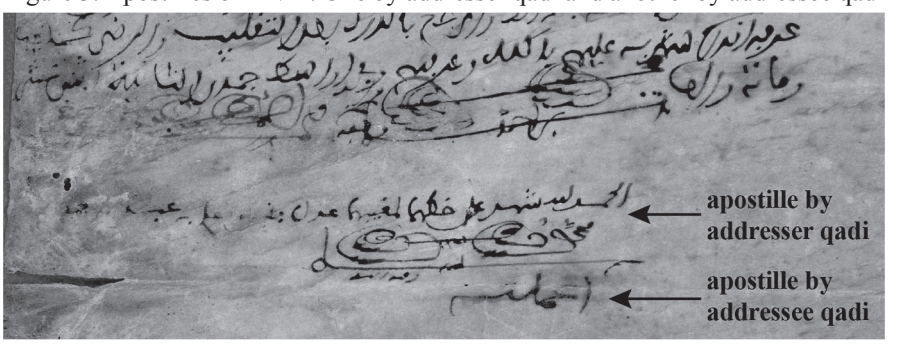
[6] According to the practice in fourteenth century Ifrīqiya, after the phrase "he made notification about ..." (*aʿlama bi-...*), a *khiṭāb* ended with greetings to the addressee, such as "*wal-salāmʿalā man yaqifu ʿalay-hi wa-raḥimat Allāh taʿālā wa-barakāt-hu*." This also shows the nature of *khiṭāb* as an address from one qadi to another. al-Wansharīsī, *al-Miʿyār al-muʿrib wal-jāmiʿ al-mughrib ʿan fatāwā ahl Ifrīqiya wal-Andalus wal-Maghrib*, 13vols., ed. Muḥammad Ḥajjī et al., Rabat: Wizārat al-Awqāf wal-Shuʾūn al-Islāmīya lil-Mamlaka al-Maghribīya, 1981–83, vol. 10, p. 61.

[7] al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, vol. 1, pp. 124, 126. The word *iktafā* does not appear in the Vellum Documents.

court and the deed became valid as evidence without any further oral testimony. For example, Deed 5 of Document I (I-5) refers to another deed in order to show the fact that the overseer of an orphan was absent, saying "according to what was confirmed in the above deed" (*ḥasabamā thabata aʿlā-hu*). Actually, Naṣṣ 3 of Deed 1 (I-1-3) written above Deed 5 establishes the absence, but an apostille *istaqalla*, not *thabata*, is written after the names of two notaries. It seems that the two words are interchangeable.

When an addressee qadi receives a deed with *khiṭāb*, he should apply the validated deed to his own decision after verifying the handwriting of the addresser qadi. He then affixes his own apostille to the deed: "I applied it" (*aʿmaltu-hu*). This does not come with his signature and just resembles a memorandum (*tadhkira*).[8] Thus, an addresser and addressee sometimes each affixed his respective apostille to the one deed, like a letter exchange. For example, below Deed 1 of Document XV, after the deed is closed with the signatures of two notaries, there is an apostille in three lines (Figure 3). The first two lines read, "Praise be to God. A notary testified about the handwriting of the two persons due to their absence and was accepted. Servant of the supreme God {XV-Q1} (signature) made notification about that" (*al-Ḥamd li-llāh, shahida ʿalā khaṭṭ-himā li-maghīb-himā ʿadl fa-qubila wa-aʿlama bi-hi ʿubayd Allāh taʿālā* {XV-Q1}). This is a *khiṭāb* from the addresser qadi (the signer of XV-Q1) for the validation of the deed and notification of it. The third line is in a different handwriting, saying "I applied it" (*aʿmaltu-hu*). This is an apostille by the addressee qadi for his application of the deed. We assume that after the qadi XV-Q1 validated the deed and wrote his *khiṭāb*, another qadi consulted the deed and made a decision about a certain case based on it.

Figure 3. Apostilles on XV-1. One by addresser qadi and another by addressee qadi



Since the *khiṭāb* is primarily a communication from an addresser qadi to an

[8] al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, vol. 1, pp. 120, 123, 125.

addressee qadi, the word *aʿlama* (he notified) is indispensable. According to the commentator al-Tasūlī, if a qadi writes only words like *iktafā*, *istaqalla*, etc., the apostille does not have any binding for another qadi to apply it to a case in his jurisdiction, because without the word *aʿlama* the apostille cannot be addressed to anyone.[9] Such an apostille is not a *khiṭāb* in the proper meaning. An apostille without the word *aʿlama*, however, often appears in the Vellum Documents, like in Figure 2. Al-Tasūlī says that this kind of apostille is just something like a memorandum (*tadhkira*) for the writer qadi and it only shows to the holder of the deed that he does not need to add any more witnesses to establish the facts.[10] Thus, apparently such an apostille could still have a certain effect in the jurisdiction of the writer qadi, even if it did not affect other qadis. Probably the holder of the deed might feel more assured when the qadi affixed his apostille to the deed after its validation.

When a qadi validated a deed and affixed his apostille to it, he sometimes registered it in his register. Registration of a deed at the qadi court was not obligatory for all the prepared deeds in Morocco until the Protectorate period in the twentieth century. But the qadi had used his own register since long before that, though its use in the medieval period is only known through some mentions in manuals, fatwas, and other sources. According to the qadi manual, a qadi should register his judgement in a dispute if a party requested him to do so. Even when the case is not in dispute, he could register a verified fact based on the request of the person concerned. In that case, registration (*tasjīl*) means the recording of testimony about the qadi's verification of deeds (*ishhād-hu bi-ṣiḥḥat tilka al-rusūm wa-katb dhālika al-ishhād*).[11] It is very probable that the qadi affixed his apostille to the deeds on the occasion of their registration. The registration must have been a safe way for the holder of a deed to secure his right. For example, in Deed 6 of Document XI, a deed of bequest was lost before the fact was "confirmed" (*wa-ḍāʿa al-rasm wa-lam yathbut dhālika*) and that caused a dispute concerning the supposed bequest. If the fact of the bequest had been confirmed or validated by a qadi and was registered, the loss of the bequest deed would not be such a big problem, as its content could be found in the qadi register. But registration of a deed was not obligatory and actually some people left their deed unregistered after its preparation, as shown in this case. Even when a qadi validated a deed and affixed his apostille to it, the deed was not always registered. The qadi manual says that the *khiṭāb* of a deceased or dis-

9 al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, vol. 1, pp. 123–124.

10 al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, vol. 1, p. 124.

11 al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim*, vol. 1, pp. 132–133. For the general idea of a qadi court as a public record office, see David S. Powers, *Law, Society, and Culture in the Maghrib, 1300–1500*, Cambridge: Cambridge University Press, 2002, pp. 18–19.

missed qadi is void unless it is registered (*siwā mā sujjila*).[12] There were some deeds which were prepared by notaries, validated by a qadi, given his apostille and registered in his register, but there were others which were just prepared and left as they were.

3. Apostilles in the Vellum Documents

There are not many apostilles in the qadi's original handwriting in the Vellum Documents. Besides the three examples shown above (XII-2, XIII-2, XV-1), we have only four others (I-8, I-9, VI-3, XIV-5). But when a deed was copied, texts of apostilles were also reproduced in the copy.[13] For example, in Naṣṣ 8 of Deed 2 of Document XI (XI-2-8) after the copied deed was closed with the names of two notaries, we read "Praise be to God. The two men gave testimony and [which was] accepted. ʿAlī b. ʿAbd al-Wāḥid al-Sharīf al-Būʿinānī, may God do good to him, gave notification about it" (*al-Ḥamd li-llāh, addayā fa-qubilā wa-aʿlama bi-hi ʿAlī b. ʿAbd al-Wāḥid al-Sharīf al-Būʿinānī khāra Allāh la-hu*). This is a typical formula for a *khiṭāb*, except that the qadi's name is written in readable letters in place of a signature. Thus, the copy preserves the apostille affixed to the source deed as well as its body. In the case of Deed 1 of Document X (X-1), after the entire text of three deeds has been copied, the phrase "after that, with the handwriting of the person who is in charge" (*wa-baʿda-hu bi-khaṭṭ man yajibu*) is written before the apostille is copied. This indicates that the apostille is written in a handwriting different from the body text in the source document. It is a kind of marker for indicating the beginning of an apostille, though it is not found in all copied apostilles.

How an apostille is reproduced in the copy is well explained in a twentieth century Moroccan formulary by al-Ṣanhājī. According to it, the marriage deed of an orphaned girl should be prepared along with a registered copy (*nuskha musajjala*) of her father's testament deed, as it includes the appointment of her testamentary guardian. After the text of the testament deed is copied, a statement about the collation of the copy with the original (*qābala-hā bi-aṣl-hā*) and the qadi's validation (*ashhada qāḍī kadhā ... bi-istiqlāl al-rasm*) is added. Then the notary who made the copy submits it to the qadi together with the original testament deed. The qadi affixes the apostille "*istaqalla*" to the original deed and affixes his signature to the copy, while the notary writes in the copy the same text with the qadi's apostille.

[12] al-Tasūlī / al-Tāwudī, *al-Bahja fī sharaḥ al-Tuḥfa / Ḥulā al-maʿāṣim li-fikr Ibn ʿĀṣim,* vol. 1, pp. 126–127. But this is the opinion of Ibn ʿĀṣim, the original author of the manual in rhymed text. The commentator al-Tasūlī said that there were different opinions on this point.

[13] For the copying of deeds in the Vellum Documens, see SATO, "Form and use of the Vellum Documents," pp. 17–18.

Finally, the copy is closed with signatures of two notaries.[14] Therefore, we can find apostilles reproduced by a notary in the copied deed. Taking these copied apostilles into account, the number of apostilles in the Vellum Documents reaches nearly ninety.

The qadi affixed his apostille based on various procedures of validation. The most fundamental was naturally oral testimony by two notaries. An apostille with the phrase "the two men gave testimony" (*addayā*) clearly indicates this procedure. For example, in the above mentioned example XI-2-8, two notaries of the deed gave oral testimony to the qadi ʿAlī b. ʿAbd al-Wāḥid al-Būʿinānī and their testimony was accepted by the qadi. The qadi then notified this to a supposed addressee qadi who might need this testimony as evidence. The deed is about the lease of land whose tenant farmer was in arrears with the rent. Probably the holder of the deed, i.e. the landowner, had the notaries give testimony at the qadi court to validate the deed. The deed, now with the qadi's apostille, must have helped him collect the rent.

If necessary, non-notary witnesses could also give testimony but this always required validation by a qadi.[15] A qadi's apostille regarding their testimony is therefore affixed to the deed. There are two types of non-notary witness: a great number of witnesses (*lafīf*) and two experts (*ahl al-maʿrifa wal-baṣar*). For example, Deed 8 of Document I (I-8) records the testimony of *lafīf*, fourteen non-notary witnesses in this case. After the deed has been closed with the names of all the fourteen witnesses, there is an apostille which reads "They testified in front of the man who was dispatched over the matter and that was confirmed" (*shahidū ladā man quddima li-dhālika li-mūjib-hi fa-thabata*).[16] The handwriting is different from the body of the deed and slightly darker (Figure 4). Deed 3 of Document VI (VI-3) involves experts. It is a testimony by two witnesses with expertise concerning the borders of agricultural land. Below their names, there is an apostille again in a different handwriting, "The two men gave testimony and that was confirmed" (*addayā fa-thabata*) (Figure 5). Another example of an apostille about the experts' testimony (Figure 6) is found in Deed 9 of Document I (I-9). It also reads *addayā fa-thabata*.[17]

[14] al-Ṣanhājī, *al-Tadrīb ʿalā taḥrīr al-wathāʾiq al-ʿadlīya*, 2nd ed., vol. 1, p. 30.

[15] For non-notary witnesses and their testimony, see SATO, "Form and use of of the Vellum Documents," pp. 14–15.

[16] The text in Part I "شهدوا لدى من قدم لذلك بموجبه به؟ ثبوت؟" should be corrected. MIURA Toru and SATO Kentaro ed., *The Vellum Contract Documents in Morocco in the Sixteenth to Nineteenth Centuries*, Part I, Tokyo: Toyo Bunko, 2015, p. 285.

[17] The text in Part I "أديا ثباتا؟" should be corrected. MIURA and SATO ed., *The Vellum Contract Documents*, p. 284.

Figure 4. Apostille on I-8. Affixed to the left below the names of the *lafīf*

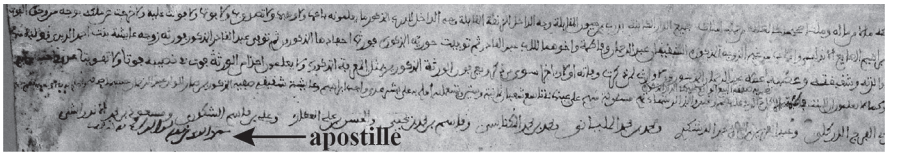


Figure 5. Apostille on VI-3. Affixed in the centre below the names of two experts

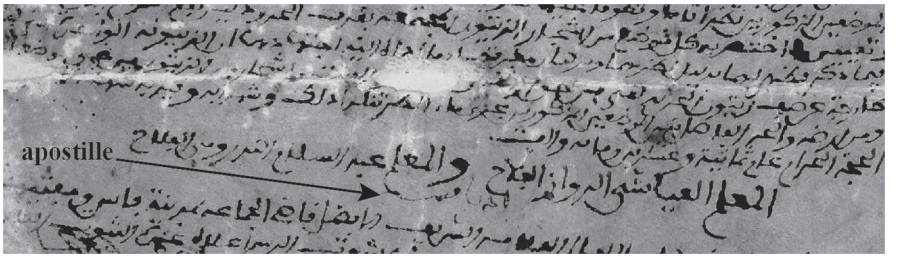
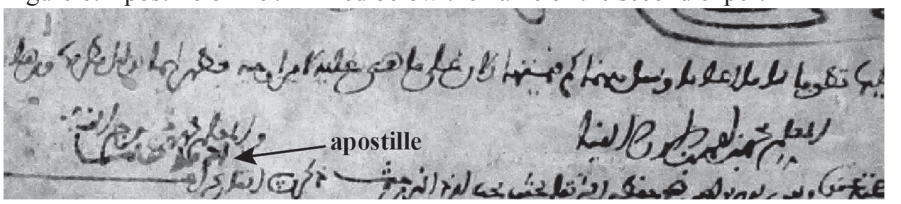


Figure 6. Apostille on I-9. Affixed below the name of the second expert



The process of how a qadi's apostille is affixed to non-notary testimony is shown in al-Ṣanhājī's formulary. According to it, first the notary hears the testimony from a great number of witnesses (*lafīf*) and records it at the end with their names, leaving a blank line below for the apostille. Then he writes another deed below, which is called the registration deed (*wathīqat al-tasjīl* or *rasm al-tasjīl*). This second deed says that the qadi had two notaries testify about the confirmation of the first deed (*ashhada ... bi-thubūt al-rasm*). The qadi's name should be left blank. After preparing these two deeds, the notary submits them to the qadi, who then fills in the two blanks, one with the apostille "They testified in front of the man who was dispatched for the matter and that was confirmed" (*shahidū ladā man quddima li-dhālika li-mūjib-hi fa-thabata*) and the other with his signature in place of his name. After the qadi returns the document to the notary, he and his colleague notary affix their signatures.[18] In the case of testimony by experts, the procedure is

[18] al-Ṣanhājī, *al-Tadrīb ʿalā taḥrīr al-wathāʾiq al-ʿadlīya*, 2nd ed., vol. 1, pp. 20–21. As the second deed is called a registration deed, the non-notary testimony must have been regis-

almost same. The expression of the apostille, however, is different, "The two men gave testimony and that was confirmed" (*addayā fa-thabata*). That is because the experts give testimony in front of the qadi while the *laftf* do not appear before him but give testimony only to the notaries.[19]

This instruction in al-Ṣanhājī's formulary conforms well with the examples in the Vellum Documents. Deeds containing non-notary testimony always come with an apostille whose wording is the same as that of the formulary; they were always followed by a registration deed which establishes confirmation (*thubūt*) of the testimony at the qadi court; and qadi's name in it appears as his signature if it is not a copy. The formulary, however, says that the qadi should also affix a *khiṭāb* to the registration deed with the phrase "*addayā fa-qubilā wa-aʿlama bi-hi*." This is not the case with non-notary testimonies in the Vellum Documents. Probably this is due to the scarcity of our samples. As mentioned above, a *khiṭāb* with the word *aʿlama* can be affixed on some occasions but not on others.

Oral testimony is not always possible even though it is the most fundamental procedure. When the notaries who drew up the deed had died or were absent, they were as a matter of course unable to appear before a qadi. This means the deed no longer guarantees the oral testimony of the notaries, so that the holder of the deed cannot expect it to have any effect as evidence of his right. The formulary says that if the two notaries died before giving testimony about their deed in front of the qadi, the deed is a mere record (*maḥḍ zimām*) and called an "incomplete" deed (*rasm ghayr tāmm*). Therefore, notaries devised a way to "revive" the deed (*iḥyāʾ rasm*).[20] Truly, such a way would be indispensable for the holder of an "incomplete" deed when he wanted to claim his right included in the deed. In the Vellum Documents, that is attained by testimony about the handwriting of the deceased or absent notaries by another notary and its validation by a qadi, during which course an apostille is affixed.

For example, the above mentioned apostille to Deed 1 of Document XV (Figure 3) says that a notary testified about the handwriting of the two persons (*khaṭṭ-himā*) due to their absence (*li-maghīb-himā*). The deed is for the purchase of farm land. We may suppose that when this purchase deed was needed as evidence for some reason, probably for claiming the right to the purchased land, the two notaries who drew it up were absent and could not give testimony. Therefore, another notary verified their handwriting, their signatures in particular, and testified about that in front of the qadi. The qadi accepted his testimony and affixed a *khiṭāb* with the word *aʿlama* and his signature. Although the fact of purchase itself was not testified in front of the qadi, the purchase deed was definitely validated by way of oral testi-

tered at the qadi court.

19 al-Ṣanhājī, *al-Tadrīb ʿalā taḥrīr al-wathāʾiq al-ʿadlīya*, 2nd ed., vol. 2, pp. 5–6.

20 al-Ṣanhājī, *al-Tadrīb ʿalā taḥrīr al-wathāʾiq al-ʿadlīya*, 2nd ed., vol. 2, p. 88.

mony about another fact, that it was drawn up by qualified notaries. Actually, the *khiṭāb* is followed by another apostille "I applied it" (*aʿmaltu-hu*), which means a qadi of another jurisdiction acted based on the validated purchase deed. The apostille to Deed 2 of Document XIII (Figure 1) is also the same kind of *khiṭāb*, though it lacks the apostille "I applied it" (*aʿmaltu-hu*). Apparently, there had been no chance to present it to another qadi, but it must have had full effect as a validated deed.

Besides this, there are various kinds of apostilles about the verification of notaries' handwriting. For example, in the case of Naṣṣ 4-1 of Deed 1 of Document XI, only one of the two notaries had died. Therefore, the following apostille says "The first [notary] gave testimony and a notary testified about the handwriting of the second [notary] due to his death and that was confirmed" (*addā al-awwal wa-shahida ʿalā khaṭṭ al-thānī li-mawt-hi ʿadl fa-thabata*). As long as one of the two is present, his oral testimony cannot be dispensed with and only the dead or absent notary's handwriting is verified by another notary for the validation.

In the Vellum Documents, however, we also find apostilles without explicit mention of oral testimony or verification of handwriting. In some of these cases, a qadi was apparently involved. For example, Deed 1 of Document VIII is a copy of two deeds. One (Naṣṣ 1) is a testament with an apostille by the qadi ʿAlī b. ʿAbd al-Wāḥid al-Būʿinānī about his notification of the deed's veracity (*aʿlama bi-ṣiḥḥat-hi*).[21] The other deed (Naṣṣ 2) is about an inheritance partition, in the latter part of which the qadi was informed of an orphan's share in the partition, which he approved. As Naṣṣ 1 included the appointment of the orphan's testamentary guardian, the qadi must have well comprehended its content before approving the orphan's share and probably heard the oral testimony from its notaries. It seems that the qadi affixed his apostille based on this understanding. On the other hand, Naṣṣ 2 is followed by another apostille "it became authorized" (*istaqalla*). It was affixed by a deputy qadi (*nāʾib qāḍī al-jamāʿa*), not the qadi himself, when it was copied on Document VIII, as shown in the statement after the copying "(*ashhada-hu ... nāʾib qāḍī al-jamāʿa ... bi-istiqlāl-hi al-rasmayn al-manṣūṣayn*)." Probably the foundation of his validation as "authorized" was relevant to the qadi's involvement in Naṣṣ 2. In the other cases, too, we may suppose that the qadi must have checked the veracity of the deed's content before affixing his apostille by way of oral testimony or some other procedure, even if any explicit mention of that is lacking.

It is not always clear when an apostille was affixed to the deed. In some cases, it was undoubtedly affixed simultaneously with the preparation of the deed. As

[21] The phrase in Part I "ʿAlī b. ʿAbd al-Wāḥid al-Sharīf al-Būʿinānī al-Ḥasanī was notified" should be corrected; the verb must be active. The qadi was the agent who notified, as explained above about the word *aʿlama*. MIURA and SATO ed., *The Vellum Contract Documents*, p. 112.

mentioned above, the testimony of non-notary witnesses required the qadi's validation. Therefore, an apostille must be affixed at the same time. That might also be the case with some testimonies by notaries. It is very probable that notaries appeared before the qadi to give testimony in order that the qadi should validate and register the deed just after they had prepared it, in case it would be needed later as evidence of its holder's right.

For example, Naṣṣ 12 to 14 of Deed 1 of Document XI (XI-1-12, 13, and 14) are followed by an apostille "The three deeds above and on the right became authorized" (*istaqallat al-rusūm al-thalātha aʿlā-hu wa-yamnat-hu*). All the three were drawn up in the early days of the month of Jumādā II in the year 1137/1725 as a purchase deed and related deeds. On the 18th of the same month, they were copied onto Document XI with a statement about the collation and the qadi's validation (*istiqlāl-hi al-rusūm al-manṣūṣa*). Therefore, the apostille *istaqalla* was affixed when the copying was done in the same month. Document XI is a compilation of deeds concerning various neighbouring parcels of land belonging to the purchaser Muḥammad b. al-Tuhāmī al-ʿAlamī. Probably, when he asked notaries to prepare the three deeds in question, he also wanted them to be copied onto Document XI in order to incorporate them into the compilation. For the copying, the qadi validated the deeds and affixed his apostille to the source deeds.[22]

On the other hand, an apostille may also be affixed long after the preparation of the deed. In the above mentioned Deed 1 of Document XI, Naṣṣ 7 to 11 (XI-1-7, 8, 9, 10, and 11) also are followed by an apostille "The four deeds above and one right margin deed became authorized" (*istaqallat al-rusūm al-arbaʿa aʿlā-hu yalī-hi wal-ṭurrat yamnat-hu*). Like the apostille on Naṣṣ 12 to 14, it was affixed to the source deeds on the occasion of their copying in 1137/1725. Unlike the case of Naṣṣ 12 to 14, however, Naṣṣ 7 to 11 were originally drawn up between 1085/1674 and 1088/1677, around fifty years before the copying. We may suppose that the holder of Document XI, Muḥammad b. al-Tuhāmī al-ʿAlamī, wanted to incorporate these old deeds into his compilation as related deeds of Naṣṣ 12. For that purpose, he needed them to be validated and during this process the apostille was affixed decades after their preparation. In the above case of the testament deed of the formulary, too, it was needed after the testator died and the marriage of his daughter was planned. At this point, the deed was brought to the qadi and he validated it with his apostille.

Regardless of these examples of apostilles, we have many deeds without one in the Vellum Documents. An apostille cannot be affixed unless a qadi is involved with the deed and validates it. This involvement and validation occur only when there is a certain necessity to use the deed, especially on the part of its holder. With-

[22] For the details of the story of Document XI, see its description in this volume, especially pp. 32–33.

out such a necessity, a deed can be preserved as such without any apostille.[23] The mixture of deeds with apostille and those without it leads us to contemplate the complicated context surrounding these deeds.

[23] In the region of Tādlā in the central Morocco, too, notaries presented the prepared deed to the qadi and he affixed a *khiṭāb* with his signature, but it was not always the case. Muḥammad ibn al-Bashīr Būsalām, "Musāhamat al-wathāʾiq al-ʿadlīya fī kitābat baʿḍ al-jawānib min taʾrīkh al-bādiya (namūdhaj Tādlā fī al-qarn 19)," *Hespéris-Tamuda* 32, 1994, p. 12.